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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/667,007	09/19/2003	Kenneth W. Whitley	P-5655/3	9137

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EXAMINER

NGO, LIEN M

ART UNIT	PAPER NUMBER
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3754

DATE MAILED: 04/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/667,007

Applicant(s)

WHITLEY, KENNETH W.

Examiner

LIEN TM NGO

Art Unit

3754

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 18 January 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-10 and 12-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 4-10 and 12-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 1/18/06 has been entered.
2. The Declaration filed on 1/18/06 under 37 CFR 1.131 has been considered but is ineffective to overcome the US 2004/0108294 reference.
3. The evidence submitted is insufficient to establish a conception of the invention prior to the effective date of the US 2004/0108294 reference. While conception is the mental part of the inventive act, it must be capable of proof, such as by demonstrative evidence or by a complete disclosure to another. Conception is more than a vague idea of how to solve a problem. The requisite means themselves and their interaction must also be comprehended. See *Mergenthaler v. Scudder*, 1897 C.D. 724, 81 O.G. 1417 (D.C. Cir. 1897).

The copy of IDR and the attachment do not indicate the establish conception prior to 8/12/2002, and the attachment of the drawing is unclear and insufficient evident for establishing the conception of the claimed invention.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1, 2, 4-7 and 12-21 are rejected under 35 U.S.C. 102(e) as being anticipated by Bloom et al. (pub. US 2004/108294). Bloom et al. disclose, in figs. 1-4, a cap assembly comprising a cap body 36 having a central orifice, a plug seal 30 having flanges 50, an annular groove (see fig. 6) and tabs 48 on a bottom surface of the plug seal.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1, 2, 4, 5, 7, 12-17, 19 and 21 rejected under 35 U.S.C. 103(a) as being unpatentable over Riera (3,499,568) in view of Doi (4,880,127).

Riera discloses, in fig. 3, a cap assembly comprising a cap body 5 having a stepped central orifice, a plug seal 2 having flanges 14,16, an annular groove 15 and tabs 48 on a bottom surface of the plug seal.

Riera does not disclose at least projecting ring being located on an under surface of the top wall of the cap body for engagement with the plug seal.

Doi teaches a projecting ring 30 located on an undersurface of the cap body for engagement with the plug seal.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide in the Riera invention with a projecting ring located on an undersurface of the cap body for engagement with the plug seal, as taught by Doi, in order to facilitate of air venting for the cap.

8. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Riera in view of Doi and further in view of Venooker et al. (5,586,673).

Venooker et al. teach, in fig. 18, a plug seal 106 comprising flanges being a discontinuous annular ring 122 for association with a central office of a cap body.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the plug seal of the Riera with the flanges being a discontinuous annular ring, as taught by Venooker, in order to facilitate of inserting the plug seal to a central office of a cap body.

9. Claims 7-10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Riera in view of Doi and further in view of Luenser et al. (4,462,502) or McIntosh (4,423,821).

Riera in view of Doi do not disclose the plug seal including an annular groove and the top wall of the cap body including a projection to be received in the groove.

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Luenser et al. or McIntosh teach a plug seal including an annular groove and atop wall of a cap body including a projection to be received in the groove.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide in Riera invention in view of Doi with the plug seal including an annular groove and the top wall of the cap body including a projection to be received in the groove, as taught by Luenser et al. or McIntosh, in order to facilitate the retaining the seal plug within the top wall of the cap.

***Response to Arguments***

10. Applicant's arguments with respect to claims 1, 2, 4-10 and 12-21 have been considered but are moot in view of the new ground(s) of rejection.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to LIEN TM NGO whose telephone number is 571-272-4545. The examiner can normally be reached on Monday through Friday from 8:30 AM -6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, MICHAEL MAR can be reached on 571-272-4906. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

LIEN TM NGO  
Primary Examiner  
Art Unit 3754

March 19, 2006

